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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ABITSCH & ABITSCH, LLC,

Plaintiff,

v.

DARUKA WANIGATUNGA,

Defendant.

Case No.: C12-1039 JSC

**REPORT AND RECOMMENDATION  
TO REMAND CASE (Dkt. No. 1)**

United States District Court  
Northern District of California


Defendant Daruka Wanigatunga has removed this unlawful detainer action to federal court for the third time. (Dkt. No. 1.) Defendant's previous assertions that removal was proper because Defendant planned to file a counter-complaint against Plaintiff based on the Federal Debt Collection Practices Act ("FDCPA") were rejected and the case remanded. See Case No. 11-4833, Dkt. No. 11 (Oct. 7, 2011 Remand Order), Case No. 11-5319, Dkt. No. 10 (Jan. 25, 2012 Remand Order). Defendant now alleges that "[a]fter the matter was remanded, Plaintiff finally produced documents and other things requested well before the initial removal . . . [which] indicate that a federal question exists and that this matter is properly in the federal court." (Dkt. No. 1 at 3.) Based on this purportedly new information, Defendant maintains removal to federal court is proper since Defendant intends to use this new information to file a counter-complaint against Plaintiff that raises a federal question. (Dkt. No. 1 at 4-5.) This is precisely the same argument Defendant previously made and lost.

1 Proper removal requires a federal question to appear “on the face of the plaintiff’s well-  
2 pleaded complaint,” and a counter-claim that presents a federal question does not create  
3 removability. Takeda v. Northwestern Nat. Life Ins. Co., 765 F.2d 815, 821-22 (9th Cir.  
4 1985). The information Defendant would use to craft this counter-claim, whether it was  
5 produced by Plaintiff before or after the case was previously remanded, is irrelevant. And  
6 even if Plaintiff had, in fact, made a counter-claim, any federal question in the counter-claim  
7 would not create removal jurisdiction.

8 Accordingly, the Court recommends that this case be REMANDED to the Superior  
9 Court of the State of California, City and County of San Francisco.

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11 **IT IS SO ORDERED.**

12 Dated: March 6, 2012

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15 JACQUELINE SCOTT CORLEY  
16 UNITED STATES MAGISTRATE JUDGE  
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